

Statement
Congressman Greg Walden
Subcommittee on Energy and Minerals
Committee on Resources
February 4, 2003

Thank you, Madame Chairman. I would like to begin my remarks by commending you and the distinguished chairman of the full committee for holding this hearing today on the need for sound science and scientific review. As you know, these topics are near and dear to the hearts of many of the constituents I represent in the Klamath Basin of southern Oregon. In fact, I challenge anyone to find a group that has been more negatively affected by the inadequacy of the science used in making decisions under the Endangered Species Act.

So what happened in the Klamath Basin? What happened to inflict more than \$200 million in damage to the local economy? What happened to turn the fields of the Basin into a scene reminiscent of the Grapes of Wrath?

Madame Chairman, on April 6, 2001, the federal government told the farmers and ranchers of the Basin that they wouldn't be receiving any water deliveries for 2001 -- a first in the nearly 100 year history of the Bureau of Reclamation's Klamath Project. They were told that instead of sending water down the "A" canal and other canals in the Project, water levels would be maintained in the Upper Klamath Lake for the Lost River and shortnose sucker fish. The irrigators were then hit with another whammy when the National Marine Fisheries Service stipulated in its biological opinion that the Bureau of Reclamation would need to release water from Iron Gate dam to help the listed salmon in the Klamath River.

In short, it was a case of one federal agency demanding high water levels be maintained in the lake while another federal agency demanded higher stream flows down the river. Combined, the two new demands left no water for the farmers.

Most people who are unfamiliar with the intricacies of the ESA would think that a decision bringing such major social, economic and environmental consequences would be thoroughly reviewed to ensure that the data and government decisions were rock solid. After all, the government is charged with protecting the endangered fish and with providing water to the farmers.

This Committee held a hearing before some 1,500 people at the fairgrounds in Klamath Falls in 2001 and we called on the Administration to have these decisions peer-reviewed. To get an independent group of scientists to review the data used by the government and determine if those decisions and those data were sound.

The Bush Administration called on the prestigious National Research Council and its National Academy of Sciences to conduct this review. After months of careful review, the independent scientists reached their stunning conclusion:

"In allowing professional judgment to override site-specific evidence in some cases during 2001...the agencies accepted a high risk of error in proposing actions that the available evidence indicated to be of doubtful utility." Moreover, the report found that some of the biologists' proposed actions lacked "substantial scientific support."

And what did this esteemed panel say about the maintaining of higher lake levels in Upper Klamath Lake for the suckers? They found that,

There is no evidence of a causal connection between water level and water quality or fish mortality over the broad operating range in the 1990s, the period for which the most complete data are available for Upper Klamath Lake. Neither mass mortality of fish nor extremes of poor water quality shows any detectable relationship to water level. Thus, despite theoretical speculations, there is no basis in evidence for optimism that manipulation of water levels has the potential to moderate mass mortality of suckers in Upper Klamath Lake.

We learned from the NAS that the decisions made either weren't based on adequate science or were made by misinterpreting the data they had. In either case, more than 1,000 farm families didn't receive vital irrigation water and nearly 2 dozen farmers went bankrupt.

I pledged then and there to pursue changes in the ESA to require outside, independent peer review of the decisions made by the government when it comes to listing or delisting a species and in formulation of recovery plans .

HR 1662 would require the Secretary of the Interior to accept and acknowledge receipt of landowner data and include that data in the rulemaking record.

It provides the public with the opportunity to seek a second opinion before a federal agency makes a decision to list, delist, consult or recover. When the survival of a species hangs in the balance, doesn't it make sense to make sure the government makes the right decisions?

If you went to a doctor and he said to you, ``we are going to have to take off your right leg," you'd probably want a second opinion. Right now under the Endangered Species Act plants, animals and people don't have the chance to seek a second opinion; you just get cut you off at the knees.

That is why I feel so strongly about this issue and why we have tried to take a very reasonable and prudent course to improve the decision-making process and make sure the science is valid and the decisions are sound. Too much is at stake to do less than that.

HR 1662 would require the NAS to select a qualified list of reviewers to conduct an analysis, which would then be submitted to the Secretary of the Interior. At her discretion, the Secretary would then pick three names off this list to conduct a thorough review of the science used in determining whether to list, delist, consult or recover.

Let's look at some of the other issues that would be decided by HR 1662.

Currently, the ESA gives the Secretary broad discretion in developing recovery plans. Public input is restricted to comment on a draft recovery plan. Nothing else, that is it.

My legislation requires agencies that are preparing recovery plans to identify, solicit, and accept scientific or commercial information that would assist in preparing the recovery plan. In other words, get more information, get better information, do it right and involve the public more.

HR 1662 would also set minimum standards for scientific and commercial data not now required by the ESA. The listing actions must be supported by field data on the species and they must accept data on species collected by landowners.

Finally, HR 1662 would require the Secretary to solicit and consider information provided by the States; and also allow an individual to submit and gain information used in crafting a biological opinion by being able to:

- Submit and discuss with the Fish and Wildlife Service, or relevant federal agency information about the proposed action and possible reasonable and prudent alternatives. Basically, it allows us to see if there are some alternatives out there that would be better than what a federal agency is proposing.
- Obtain information used to develop the biological opinion and reasonable and prudent alternatives. In other words, we ought to have a right to know where Fish and Wildlife obtained their data before it is incorporated into a final biological decision.
- Provide comments prior to publication of the final biological opinion. If these comments aren't included in the final biop, the Fish and Wildlife Service or other federal agency must explain why these suggestions were rejected.

These modest changes benefit all citizens who want to participate in what should be a much more inclusive public process, and they make the ESA process more transparent.

At last count, Madame Chairman, HR 1662 has 62 bipartisan cosponsors has been endorsed by 14 Oregon and National based organizations.

I thank you for inviting me to testify today, and I yield back the balance of my time.